IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5511 of 1994

with

CRIMINAL MISC.APPLICATION No 2797, 2798, 2800
2801, 2804 and 2805 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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K.S.KOSAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5511 of 1994
MR YN OZA for Petitioner No. 1
MR BC DAVE for Petitioner No. 2
Mr V M Pancholi, APP for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/09/2002

ORAL (COMMON) JUDGEMENT

This is a group of applications under section 482 of the Code of Criminal Procedure, 1973 for quashing and setting aside criminal complaints, details of which are given below:

Sr. No.	Criminal case No.	Cr.Misc.Appli-cation No.	Pending before
1.	278/94	5511/94	J.M.F.C. Babara, Dist. Amreli
2.	5410/94	2797/97	Chief Judicial Magistrate,Mehsana
3.	561/94	2798/97	J.M.F.C. Harij, Dist.Mehsana
4.	369/95	2800/97	J.M.F.C. Shihori, Tal:Kankrej
5.	1238/96	2801/97	Chief Judicial Magistrate, Rajkot
6.	5165/94	2805/97	Chief Judicial Magistrate, Mehsana
7.	5635/95	2804/97	J.M.F.C. Bhavnagar

The criminal cases mentioned above are for offence punishable under section 16 read with sections 7(1) and 7(5) of the Prevention of Food Adulteration Act, 1954 (for short, 'the Act'). It is the contention of the respondent-Food Inspector that he had gone to the shop of the petitioners herein and had obtained sample of 'Jagat Mithi Dhana Dal' in accordance with the rules. That the sample was sent to the Public Analyst and report was received showing that the said food product contained Saccharin. The respondent-Food Inspector contended before the trial court that the use of Saccharin or addition thereof in a food product was impermissible and, therefore, the said food article was containing saccharin which was not permitted to be used and, therefore, the said food article was adulterated. That the petitioners have stored the said food article in the business premises with the intention to sell the same. That the petitioners have actually sold the said food article to the respondent-Food Inspector. That thereby the petitioners have sold adulterated food article and committed the aforesaid offence. On receiving the complaint, the learned Magistrate registered the complaint and issued process against the petitioners. Therefore, the petitioners have approached this court with this application for quashing the said complaint. It has been mainly contended here that the learned Magistrate has not applied his mind while registering the complaint and while issuing the process. It has been contended that the petitioners have not committed any offence. That in fact the sample did not contend any

prohibited substance and, therefore, the said food article was not adulterated food article and, therefore, the petitioners have not committed any offence. That therefore, the present application be allowed, the aforesaid complaint before the aforesaid court may be quashed and set aside and the petitioners may be acquitted of the offence indicated above.

2. On receipt of the aforesaid application, notice was issued at the first instance and rule was issued thereafter. Mr V M pancholi, learned APP has appeared on behalf of respondents No.1 and 2 in response to the service of notice of rule.

3. I have heard the learned Advocates for the parties and have perused the papers. Mr Y N oza, learned Sr.Advocate appearing on behalf of the petitioner has argued at length that even if the complaint, as it stands, is read as a whole, no offence can be said to have been committed by the petitioners herein and no offence has been made out against them and, therefore, the complaint deserves to be quashed and set aside and the petitioners have become entitled to be acquitted outright. In support of the said contention, it is his argument that the food product in respect of which the sample collected was really pan masala and, therefore, it is to be construed as such. It is, therefore, his conention that the said food product should have been treated to be a pan malasa and the rules applicable to pan masala should have been applied to the said food product also. It is also his contention that if the food product in question is treated to be pan masala, then in that event, it stands as per the standards provided for the said food product and no offence can be said to have been committed by the petitioners herein.

4. So far as pan masala is concerned, we can refer to the provisions made in the Prevention of Food Adulteration Rules, 1955. Appendix B provides for certain food articles. A.30 is the definition of pan masala which can be read as follows:

"A.30 - "Pan Masala" means the food generally taken as such or in conjunction with pan. It may contain:

Betelnut, lime, coconut, catechu, safron, cardamom, dry fruits, mulethi, sabermusa, other aromatic herbs and spices, sugar, glycerine,

glucose, permitted natural colours, menthol and non-prohibited flavours.

It shall be free from added coal-tar colouring amtter, (X X X) and any other ingredient injurious to health.

It shall also conform to the following standards, namely -

Total ash - Not more than 8.0 per cent by weight (on dry basis).

Ash insoluble in dilute Hydrochloric acid Not more than 0.5 per cent by weight (on dry basis)."

From a bare reading of the definition of the term 'pan masala', it becomes clear that it is a food generally taken as such or in conjunction with Pan.

5. This means that any food article which may generally be taken as such or in conjunction with pan is a pan masala.

6. It cannot be disputed that Dhana Dal is an article which is generally being used with pan. In that view of the matter, Dhana dal is to be treated to be pan masala within the meaning of the aforesaid definition contained in A.30 of appendix B to the rules of 1955.

7. Then we can turn to the requirement of pan masala as can be found in Rule 47 of the said Rules. The said rule may be reproduced for ready reference as under:

"47. Restriction on use and sale of artificial sweetners : (1) No artificial sweetner shall be added to any article of food:

Provided that artificial sweeteners may be used in following food article in quantities not exceeding the limits shown against them and shall bear the label declaration as provided in (1) of sub-rule (ZZZ) of Rule 42:

TABLE

Sr. No.	Name of artificial sweetner	Article of Food of artificial sweetner	Max.limit
1.	2.	3.	4.

1.	Saccharin sodium water	Carbonated	100 ppm.
	-do-	Supari	4000 ppm.
-do-		Pan Masala	8000 ppm.
-do-		Pan flavouring	8 percent

The above provision makes it clear that ordinarily an artificial sweetener is not permitted to be added to any article of food. However, an exception has been caraved out with respect to the food articles mentioned in the table attached to rule 47 of the said rules. On the one hand, the food articles which are exempted from the operation of sub-rule (1) of rule 47 of the said rule are enlisted, on the other hand, the limit of maximum artificial sweetener has also been mentioned in the same table. On going through the said table, it becomes clear that Saccharin is permitted to be used in pan masala to the extent indicated in column (4) of the said table. In the present case, it is not the case of the respondents that the quantum of the artificial sweetener has exceeded the maximum limit of artificial sweetener mentioned in the said table. The only contention is that though the artificial sweetener is not permitted to be added, it has been added in Dhana Dal. Once Dhana dal is treated as masala and once it is found that the quantum of aritificial sweetener does not exceed maximum limit of artificial sweetner as stated in the table to the proviso to sub-section (1) of section 47 of the said rules, then in that event, this Dhana dal containing artificial sweetener i.e. Saccharin, cannot be treated to be adulterated food article for the purpose of filing complaint and for the purpose of convicting the said petitioners. I am, therefore, of the opinion that Dhana dal is a pan masala and, therefore, addition of Saccharin is not impermissible. In other words, even if Saccharin which is an artificial sweetener has been added to Dhana dal without the permissible limit as laid down by the Rules as indicated hereinabove, it would not amount to an adulterated food and consequently, no complaint can be filed against the petitioners and no conviction can be imposed on the petitioners on the aforesaid set of facts. In that view of the matter, when no offence has been made out, even prima facie and even on a bare reading of the complaint, then in that case, there is no option but to allow this application and to quash the complaint.

8. Mr V M Pancholi, learned APP referred to the provision contained in rule 42 of the said Rules. The

said relevant provision can be gathered from (ZZZ)(1) which reads as under:

"(ZZZ) (1) Every package of food which is permitted to contain artificial sweetener mentioned in table given in Rule 47 shall carry the following label, namely ;

"This....(name of food) contains.....{name of artificial sweetener)

On reading the said provision an attempt was made by him to argue that there was violation of the said part of the rule and warning as contemplated and indicated above, it has not been exhibited on the package of Dhana dal. On going through the complaint, it is found that no such allegation has been made in the complaint. Therefore, it has not been the case of the respondent Food Inspector that the aforesaid provision was violated by the petitioners. Therefore, the said argument cannot be advanced for the first time in this Court when no such complaint has been made with respect to the absence of warning exhibited on the package of Dhana dal.

9. He has then argued that the package of the aforesaid food article did not contain the warning as stated in {ZZZ)(3) of the rules which is reproduced as under:

(ZZZ) (3) Every package of Pan Masala and advertisement relating thereto shall caarry the following warning, namely;

"Chewing of Pan Masala may be injurious to health".

Here also, the complaint does not say that the said warning was not there on the package on the pan masala. When the complaint is silent on the aforesaid facts and circumstances, it would not be open to the learned APP to argue for the first ime in this court that the package did not contain the aforesaid statutory warning. It is found that pan masala is also an article of food which is generally being taken along with pan. Therefore, it is to be treated to be pan masala and once it is treated to be pan masala, then the presence of Saccharin would not be impermissible. In other words, even if Saccharin is found to be present in Dhana dal, it would not amount to

an offence punishable under the said Act.

10. It has, also been contended that Dhana dal may or may not be used with pan in all cases. It is not necessary that the food article must be used with pan only. Even if it is used apart from pan masala then also it can be said that dhana dal may be used as independent food and apart from pan. At the same time, it is not much in dispute that dhana dal is being used generally with pan. Therefore, it has to be treated to be pan masala and, therefore, the standard of pan masala has to be made applicable to dhana dal also. In above view of the matter, it is apparerntly clear that dhanadal is a pan masala and, therefore, in application of the standard made applicable to pan masala has to be taken into consideration and once that aspect is taken into account, then it is apparently clear that presence of Saccharin in dhana dal will not be prohibited and, therefore, even if Saccharin is found present in dhana dal, the said sample cannot bet reated to be adulterated one and once the sample is not found to be adulterated then in that case, no offence can be said to have been committed. No other argument has been advanced and no other factual dispute has been taken. Even the complaint has been silent with respect to the package and certificate and warning in his complaint. However, when this point was raised, it has been dealt with by this court. Suffice it to say that the complaint does not disclose any offence and no offence has been made out against the petitioners. Therefore, the present application is required to be allowed and the complaints before the Court concerned is required to be quashed and set aside.

10. For the foregoing reasons, this group of applications is allowed. The Criminal Cases referred to above pending before the concerned Magisterial Courts as aforesaid are quashed and set aside. The petitioners herein are ordererd to be acquitted of the offence punishable under section 16 read with section 7 of the Prevention of Food Adulteration Act, 1954. Rule is made absolute.

3.9.2002

[D P Buch, J.]

msp